Remarks

Claims 2-10 and 12-27 remain pending.

Double Patenting Rejection

The Examiner provisionally rejected claims 2-6, 8-10, and 12-27 on the grounds of non-statutory obviousness-type double patenting over claims 1 to 14 of co-pending U.S. Patent Application No. 11/928848 (Zhao et al). The Examiner also considers the claims of the instant application to be generic to all that is recited in the claims of the co-pending application. Applicants respectfully request that this objection be held in abeyance pending allowance of one of the applications.

Failure to Consider Applicants' Previously Submitted Arguments

Applicants submit that the Examiner has failed to consider the arguments presented in each of the Responses dated March 3, 2009, August 26, 2008, and April 3, 2008, with respect to the teachings of U.S. Patent No. 6,249,681 (Virtanen).

The Examiner cited Virtanen against independent claims 12 and 21 in each of the Office Actions dated January 7, 2008; June 6, 2008; and December 4, 2008. Applicants traversed the rejections based on Virtanen in the Responses dated April 3, 2008; August 26, 2008 and March 3, 2009. However, the Examiner failed to consider the Applicants' arguments and failed to answer the substance of the arguments, while continuing to rely on Virtanen for rejecting independent claims 12 and 21. This is clearly contradictory to the Examination guidelines set forth in MPEP 707.07(f) ANSWER ALL MATERIAL TRAVERSED. Applicants submit that the Examiner's actions do not enhance the clarity of the prosecution history record and do not provide clear explanations of all actions taken by the examiner during prosecution of this application.

The Examiner's remarks under the section "Response to Arguments" in the Office Action dated June 5, 2009, merely states "Applicant's arguments with respect to claims 2-10 and 12-27 have been considered but are moot in view of the new ground(s) of rejection" (see Office Action dated June 5, 2009 at page 9). However, the Examiner has failed to address the "arguments presented by the applicant which are still relevant to any references being

applied," as set forth in MPEP 707.07(f) form paragraph ¶ 7.38 (reproduced below with emphasis added).

> ¶ 7.38 Arguments Are Moot Because of New Ground(s) of Rejection
>
> Applicant's arguments with respect to claim [1] have been considered but are moot in view of the new ground(s) of rejection.
>
> Examiner Note
>
> The examiner <u>must</u>, however, address any arguments presented by the applicant which are <u>still relevant to any references</u> being applied.

Applicants respectfully submit that while the Examiner has continued to rely on Virtanen for his rejections, the Examiner has failed to address the arguments presented in each of the Responses dated March 3, 2009, August 26, 2008, and April 3, 2008, with respect to the teachings of Virtanen.

Applicants respectfully request the Examiner to consider the previously submitted arguments in support of patentability of claims 12 and 21 over Virtanen and answer the substance of these arguments, if the Examiner continues to rely of Virtanen.

Claim Rejections under 35 USC 103

The Examiner rejected claims 2-6, 9, 10, 12-16, 18 and 21-27 as being unpatentable over U.S. Patent No. 6,249,681 (Virtanen) in view of U.S. Patent No. 5,748,620 (Capruka). Applicants respectfully disagree for at least the following reasons.

As submitted earlier, Applicants submit that the Examiner has <u>not</u> considered any of the detailed rebuttal arguments presented with respect to Virtanen. For completeness and ease of reference, Applicants resubmit the rebuttal arguments from the Response dated March 3, 2009.

Applicants' remarks with respect to Virtanen from the Response dated March 3, 2009

Applicants reiterate the arguments presented in the Responses dated April 3, 2008 and August 26, 2008, regarding the method of Virtanen. Specifically, Applicants submit that Virtanen is does not teach or suggest a method and a system for establishing and maintaining an "always on" data connection to a wireless data network.

The passages cited by the Examiner are general procedures involved with the re-establishment of a call. Specifically, column 1, line 9 to column 2, line 4 of Virtanen describe that, "systems based on the GSM standard may support a mobile station triggered call re-establishment procedure that uses a call re-establishment message that includes only the subscriber identity of the mobile station and the mobile station's classmark." The cited passage further recites the details associated with the re-establishment procedure according to GSM standard.

Column 4, lines 21 to 67 of Virtanen describes the details of a call-release or inactivity timer at each of the mobile station and the base station/MSC that is "reset and started when a latest packet data is sent or received" (see Virtanen, column 4, lines 22-23). The call-release or inactivity timer is "set to run a predetermined period and, if no packet data is sent or received to reset the timer before the predetermined period expires, the transceiving device (mobile station or base station) in which the timer expires sends a release order message to the other device" to release the call (see Virtanen, column 4, lines 23-28, emphasis added). The cited passages further describe the contents of the release order message and how a call can be re-established using information in the release order message upon initiation of re-establishment of the call.

Contrary to the method and the mobile device as claimed in claims 12 and 21, the call-release or inactivity timer of Virtanen automatically releases an established packet data call due to inactivity and does not maintain an always-on connection as claimed in claims 12 and 21.

Column 5, lines 1 to 15 of Virtanen summarizes an embodiment disclosed therein for re-establishing a call using a re-establishment request message. Column 12, lines 24 to 58 of Virtanen further describe in detail the embodiment for re-establishing a call using re-establishment request message with reference to Figures 7A and 7B.

Nowhere does Virtanen teach the determination of the status of a previously established data connection at minimum fixed intervals set by a service check timer, as recited in claim 12. Nor does Virtanen teach a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost, as recited in claim 21.

Thus, Virtanen simply teaches a method for re-establishing an interrupted packet data call while shortening the time and decreasing signaling required to re-establish the interrupted packet data call. Virtanen achieves this by storing the current service configuration information until the expiry of related timers in the mobile and base stations. Nothing in Virtanen teaches or suggests <u>establishing and maintaining</u> an "always-on" connection as claimed in claims 12 and 21.

Moreover, if "Virtanen does not specifically disclose determining, at minimum fixed time intervals determined by a service check timer, the status of a previously established data connection" (as concluded by the Examiner, see Office Action dated December 4, 2008, at page 8), then Virtanen <u>cannot</u> teach or suggest "automatically transmitting a connection request if the previously established data connection is determined to be lost", simply because Virtanen does <u>not</u> check the status of the previously established data connection at minimum fixed time intervals determined by a service check timer as claimed in claims 12 and 21.

Capurka does not overcome the deficiencies of Virtanen

As submitted earlier, Virtanen does <u>not</u> teach the determination of the status of a previously established data connection at minimum fixed intervals set by a service check timer, as recited in claim 12. Nor does Virtanen teach a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost, as recited in claim 21.

Capurka does <u>not</u> teach or suggest any of the above features recited in claims 12 and 21.

The Examiner stated, "Capurka teaches determining, at minimum fixed time intervals determined by a service check time, the status of a previously established data connection (see Abstract, column 9, lines 55-63 and column 10, lines 51-56, see "determined" and "previous connection")" (see Office Action dated June 5, 2009, at page 4).

Capurka discloses a method for providing communications to communication device in a radio communication system that efficiently utilizes inbound and outbound control channel resources by reducing the amount of control channel activity (paging) normally associated with delivering such a communication (see Capurka at column 3, lines 4-6 and at column 3, line 67 – column 4, line 2). Capurka has nothing to do with a method and/or a system for establishing and maintaining an "always on" data connection to a wireless data network.

Furthermore, according to Capurka, the packet data communication is provided to the communication device by "presuming that the communication device has not moved of the service coverage area of the first base site for a predetermined amount of time after the communication device's involvement in a previous communication" (see Capurka t column 4, lines 2-5, emphasis added).

A mere presumption that the communication device has not moved of the service coverage area is not the same as "determining, at minimum fixed time intervals determined by a service check time, the status of a previously established data connection" as recited in claim 12.

The specific passages cited by the Examiner, i.e., column 9, lines 55-63 and column 10, lines 51-56 of Capurka, does not teach or suggest "determining, at minimum fixed time intervals determined by a service check time, the status of a previously established data connection" as alleged by the Examiner. The cited passages describe the steps involved in the method of delivering a communication packet or a portion thereof to minimize the utilization of paging channels according to Capurka.

Specifically, at column 9, lines 55-63, Capurka describes the steps involved when the communication is received with a predetermined period of time of the previous communication. The communication is then delivered to the communication device when an RF traffic channel is available at the base site that received the communication device's registration, thus obviating the need for utilizing a control (paging channel). As stated earlier, this is based on the presumption that the communication device has not moved of the service coverage area of the first base site. No determination of the status of a previously established connection is made.

Column 10, lines 51-56 of Capurka describes the steps involved when the communication is not received with a predetermined period of time of the previous communication. In this scenario, the system controller determines if the communication device has requested direct delivery of the communication prior to delivering the communication. If direct delivery has not been requested by the communication device, the system controller pages the communication device in a conventional manner prior to delivering the communication to the communication device. Once again, no determination of the status of a previously established connection is made upon the expiry of the predetermined period of time.

Clearly, the predetermined period of time described by Capurka is not the same as the service check time recited in claim 12. Moreover, upon expiry of the predetermined period of time in Capurka, the system controller simply waits for any subsequent communication intended for the communication device and delivers the communication directly (if direct delivery has been requested) or pages the communication device in a conventional manner prior to delivery of the communication. Contrary to the method recited in claim 12, determination of the status of a previously established connection is not made in Capurka.

Thus, the predetermined period of time described in Capurka is not the same the service check time and Capurka does not determine, "at minimum fixed time intervals determined by a service check timer, the status of a previously established data connection," as claimed in claims 12 and 21.

Thus, Virtanen and Capurka, either alone or in combination, do not teach or suggest all the features of claims 12 and 21 and their respective dependent claims 2 to 6, 9, 10, 13-16, 18 and 22 to 27. Accordingly, at least for the reasons provided above, Applicants respectfully request that the rejections under 35 U.S.C. §103(a) be withdrawn.

Other Rejections

The Examiner rejected claims 7 and 8 as being obvious in view of Virtanen in view of Capurka and further in view of U.S. Patent No. 4, 827,507 (Marry); claim 17 as being obvious in view of Virtanen and Capurka; claim 19 as being obvious in view of Virtanen and Capurka and further in view of an Official Notice; and claim 20 as being obvious in view of Virtanen in view of Capurka and further in view of U.S. Publication No. 2002/0082032A1 (Hunzinger).

Appl. No. 10/533,960
Response dated September 3, 2009
Office Action dated June 5, 2009

Page 8 of 8

Each of claims 7, 8, 17, 19, and 20 is dependent, directly or indirectly, from claim 12, and includes all the features of claim 12. Applicants reiterate the comments made above in respect of Virtanen and Capurka, and submit that, since neither Virtanen nor Capurka teach all the features of independent claim 12, they cannot teach or reasonably suggest all the features of a claim dependent from claim 12. Applicants further submit that none of Marry, the Official Notice or Hunzinger teach or suggest a service check timer that determines the minimum fixed time intervals at which an established data connection is checked, as claimed herein.

Therefore, Applicants submit that there is no combination of the cited references that can teach or suggest all the claimed limitations in claims 7, 8, 17, 19, or 20, and no showing of *prima facie* obviousness can be made. Withdrawal of the rejections under U.S.C. §103(a) is respectfully requested.

Applicants submits that all the Examiner's rejections have been addressed and respectfully requests early reconsideration of this application.

The Commissioner is hereby authorized to charge any additional fees, and credit any over payments to Deposit Account No. 501593, in the name of Borden Ladner Gervais LLP.

Respectfully submitted,

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